

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION NO.455 OF 1999

For Approval & Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

1. Whether reporters of local papers may be allowed to see the judgment ?
2. To be referred to the reporters or not ?
3. Whether their lordships wish to see the fair copy of the judgment ?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?
5. Whether it is to be circulated to the Civil Judge?

VADODARA MUNICIPAL CORPORATION
VERSUS
SM SAIYED

Appearance:

MR ND GOHIL for petitioner
MR SM SAIYED - respondent present in-person

Coram: MR.JUSTICE S.K. Keshote,J
Date of decision: 30/03/2000

C.A.V. JUDGMENT

#. The checkered history of this case need not be given as a very short point has been raised by learned counsel for the petitioner in this revision application. Heard the learned counsel for the petitioner and respondent in-person.

#. The respondent was dismissed from services of the Corporation by an order dated 12.12.69. This order was ultimately set aside by the Hon'ble Supreme Court and he was ordered to be reinstated back in service with full backwages. The dispute has arisen whether the judgment of the Hon'ble Supreme Court has been complied with or not and the plaintiff-respondent filed Special Darkhast No.29 of 1996. This Darkhast was allowed and the executing court has directed the Corporation to deposit Rs.62,912/= in the court on or before 10th October, 1996. Against this order, this revision application has been filed.

#. The only contention raised by learned counsel for the petitioner is that the respondent was punished with penalty of withholding two grade increments with future effect under the order dated 6.6.69 and while giving benefit to the petitioner, this order has to be given effect to and this has been given effect to while implementing the order of the Hon'ble Supreme Court. The learned executing court held that once the court has given direction for reinstatement of respondent with full backwages, no grade increments could have been withheld by the Corporation. Same contention has been raised by respondent in this revision application also.

#. The dismissal order is dated 12.12.69 on which fact there is no dispute. The respondent also does not dispute that this order of withholding of two grade increments with cumulative effect has been passed on 6.6.69. The respondent also admits that he has not challenged this order of 6th June 1969. What he contended that this order merged in dismissal order and when the order of his dismissal has been set aside by the Hon'ble Supreme Court with further directions for his reinstatement with full backwages, these two grade increments cannot be withheld.

#. I do not find any substance in this contention of the respondent. The order of withholding of two grade increments of respondent is prior in time than the order of his dismissal from services. The order earlier has not been challenged. On setting aside of the order dated 12.12.69, this order has to be given effect to. The executing court has committed a serious illegality in

exercising its jurisdiction in allowing these grade increments to the respondent. The order of the court below if allowed to stand, will certainly occasion failure of justice and will cause irreparable injury to the petitioner as the petitioner has to give benefit of two grade increments to the respondent for which he was not otherwise entitled. The respondent fairly admits before this court that this fact has not been brought to the notice of the court while the matter of his dismissal from services was under consideration. However, he blames the petitioner. The petitioner has also not brought this fact to the notice of the court. But it is hardly of any substance. This order has not been challenged by respondent. It is not a case of merger of this order in the order of dismissal. These are two different and distinct orders and effect has to be given to the earlier order if it is not set aside while computing the benefits to be given to him on setting aside of the order of dismissal.

#. In the result, this civil revision application succeeds to this extent and the order of the learned executing court is accordingly set aside and the executing court is directed to re-determine the amount payable to the respondent, if any remains, after giving effect to the order dated 6.6.69. Rule is made absolute accordingly with no order as to costs.

.....
(sunil)